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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDRE COMBS,

Defendant and Appellant.

H044334

(Monterey County

Super. Ct. No. SS121909)

After a court trial, defendant Andre Combs was found guilty of second degree murder. (Pen. Code § 187, subd. (a).)¹ The trial court also found true the allegation that defendant had suffered a prior strike. (§ 1170.12, subd. (c)(1).) The trial court sentenced defendant to a prison term of 30 years to life.

On appeal, defendant argues that there was insufficient evidence to support his conviction for second degree murder. Specifically, he argues that his claim that he killed in self-defense was “a plausible one” and supported by ample evidence. We find there was substantial evidence to support his conviction, and affirm the judgment.

¹ All further statutory references are to the Penal Code.

I. Factual Background

On October 11, 2010, Correctional Officer John Bertrand was patrolling building No. 5 at Salinas Valley State Prison. At around 8:30 a.m., defendant, an inmate at the facility, flashed the lights in his cell and yelled, “C.O., C.O.” Officer Bertrand approached defendant’s cell. Defendant told Officer Bertrand: “my [cellmate] isn’t breathing, and when I woke up, he was like that.” Looking into the cell, Officer Bertrand saw defendant’s cellmate, Quincy Adams, on the bottom bunk, completely covered in a blanket. Officer Bertrand instructed defendant to remove the blanket. Defendant moved the blanket, but only enough to uncover Adams’s feet. Officer Bertrand yelled to another correctional officer to activate the alarm, and he radioed that there was an “[u]nresponsive inmate.”

After additional personnel responded, Officer Bertrand placed defendant in handcuffs and removed him from the cell. Prison staff found Adams unresponsive. After removing the blankets, staff discovered that Adams was on his stomach. He had a large laceration on the back of his head, which was covered in blood. The mattress was also bloody. Adams was removed from the cell and brought outside. Adams’s body was still warm. A nurse checked for a pulse and found none. Medical personnel performed CPR and administered an electronic defibrillator until a doctor pronounced Adams dead at 8:51 a.m.

Defendant was taken to a holding room, where an investigator from the district attorney’s office advised him of his constitutional rights. The investigator spoke with defendant for “a minute or so” and then called a nurse to draw a blood sample. After the blood sample was drawn, the investigator and nurse moved to leave the room. As they were leaving, defendant “made a spontaneous statement,” saying: “I didn’t mean to kill him. I woke up, and he was dead.”

Medical personnel examined defendant and documented his injuries. They noted defendant had an abrasion on his lower lip. Although it appeared to be recent it was not bleeding. Personnel also observed an abrasion on the inside of his left forearm, above the wrist. Defendant had no injuries to his hands. Defendant did not appear to be bleeding, but his clothes were covered in blood.

Dr. John Randolph Hain, a forensic pathologist, performed an autopsy. He first observed Adams's body on the day of his death, and noted that "the body was warm," indicating that Adams had likely died a few hours prior. He later examined Adams's body more thoroughly, noting an abrasion, swelling, and bruising under his left eye. He also noted additional bruising on the left side of Adams's head. He stated that these injuries were caused at the time of Adams's death, and were the result of contact with a flat surface or possibly a punch to the head.

Additionally, Dr. Hain observed a large laceration on the back of the head, likely caused by impact with "the corner of something . . . as opposed to a knife or something extremely sharp." Adams also had lacerations on his lips and cheek, likely the result of a violent force pushing the cheek against the teeth. Finally, Dr. Hain observed several abrasions on Adams's neck, which were caused by Adams's fingernails as he clawed at his own neck. Dr. Hain opined that it appeared Adams had tried to remove a source of pressure pushing against his neck.

Based on the "constellation of injuries" to Adams's neck, the injuries to his mouth and cheek, and the injury to his collarbone, Dr. Hain concluded that the cause of Adams's death was homicide, "most likely strangulation." Dr. Hain further concluded that Adams had likely been choked by an arm pressed to both sides of Adams's neck, blocking the carotid arteries. He explained that while unconsciousness from a chokehold can "occur within . . . ten seconds," death requires "some kind of sustained pressure" for much

longer, usually minutes. He noted that while a lethal chokehold need not be applied continuously, to result in death it did require “reapplication of force” after unconsciousness occurs.

At trial, defendant maintained that he killed Adams in self-defense. Defendant testified that he had an ongoing dispute with Adams. According to defendant, Adams was upset over a small gambling debt that defendant owed Adams. Defendant claimed he was intimidated by Adams and that Adams had previously demanded the money from him. The night prior to Adams’s death, the two argued over the gambling debt for “a couple of hours” before defendant went to sleep. Defendant awoke the next morning to find Adams already awake watching television. According to defendant, after a few moments of “awkward silence,” Adams told defendant that he would have to move.

Later in the morning, Adams told defendant that he was “serious” about defendant moving. Defendant testified that he tried to flag down a correctional officer, but was unable to get anyone’s attention. According to defendant, Adams then rushed him, cursing and telling me to “get down.” Adams wrapped his arms around defendant’s torso and lifted him off the ground. After defendant’s feet returned to the ground, he pushed back against Adams. Defendant believed he may have caused Adams to hit his head against one of the shelves. Defendant then swung his left elbow back, hitting Adams in the face. Adams fell to the ground. As soon as Adams fell, defendant tried to “pounce” on him. Adams, however, stood up before he could do so. Defendant and Adams struggled and wrestled around, “scratching each other and just clawing.” Defendant maneuvered Adams into a headlock, first from the front, but Adams “slipped out” of defendant’s grip. The second time, defendant applied a “rear-naked choke[hold] from behind.” Adams “struggl[ed] his hardest to get out of it,” but eventually he “stopped putting up a fight.” Defendant testified that as soon as Adams “stopped putting up a

fight,” he “release[d] the stranglehold immediately afterward”—after “[a]bout 30 seconds.”

After Adams stopped moving, defendant testified that he went to the door, looked back, but “didn’t know if [Adams] was faking or not.” There was “blood everywhere,” so defendant attempted to clean up the blood with towels. He removed his shirt, which was also bloody, and washed his hands. He testified he was not sure why he put the blanket over Adams’s body, but that he did so to get it “out of the way.” In hindsight, he admitted he likely used the blanket to cover Adams’s body “[because] there was blood.” Defendant was asked why he lied to Officer Bertrand—telling him that Adams “was like that” when defendant woke up. Defendant explained that he “was concerned about other inmates becoming aware of what the situation was, and possibly being retaliated against.” Defendant maintained that he did not know that Adams was dead when he alerted Officer Bertrand.

II. Discussion

Defendant challenges the sufficiency of the evidence, arguing that his claim of self-defense was a “plausible one indicating that he reasonably believed he needed to and did defend himself.”

“‘When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ [Citation.] We determine ‘whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’

[Citation.] In so doing, a reviewing court ‘presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.’ [Citation.]” (*People v. Edwards* (2013) 57 Cal.4th 658, 715 (*Edwards*).)

Substantial evidence supports the trial judge’s determination that defendant was guilty of second degree murder beyond a reasonable doubt. (See *Edwards, supra*, 57 Cal.4th at p. 715.) “Section 187, subdivision (a), defines murder as ‘the unlawful killing of a human being, or a fetus, with malice aforethought.’ . . . Murder is divided into first and second degree murder. [Citation.] ‘Second degree murder is the unlawful killing of a human being with malice, but without the additional elements (i.e., willfulness, premeditation, and deliberation) that would support a conviction of first degree murder. [Citations.]’ [Citation.]” (*People v. Chun* (2009) 45 Cal.4th 1172, 1181 (*Chun*).) Malice may be either express or implied. (*Ibid.*) Implied malice requires a showing that the defendant performed ““an act, the natural consequences of which are dangerous to life”” and that the defendant ““knows that his conduct endangers the life of another and . . . acts with conscious disregard to life.”” (*Ibid.*)

Here, defendant claimed he killed Adams in self-defense, which negates a finding of malice. (*People v. Elmore* (2014) 59 Cal.4th 121, 134.) The trier of fact, however, was presented with testimony and medical evidence that Adams’s strangulation death resulted from being choked for several minutes, well beyond when Adams was rendered unconscious. Evidence also showed that Adams suffered from significant physical trauma, while defendant appeared relatively uninjured. A reasonable trier of fact could conclude that defendant, by administering a chokehold over the course of several minutes, committed an act that was “dangerous to life,” and that in so doing, defendant knew that his conduct endangered Adams’s life but nevertheless consciously disregarded that risk. (See *Chun, supra*, 45 Cal.4th at p. 1181.) Accordingly, substantial evidence

supports the trial court's second-degree murder verdict. (See *Edwards, supra*, 57 Cal.4th at p. 715.)

Without much additional argument, defendant relies almost entirely on *People v. Blakeslee* (1969) 2 Cal.App.3d 831 (*Blakeslee*). In *Blakeslee*, the defendant was convicted of second degree murder in the shooting death of her mother. (*Blakeslee*, at p. 836.) The defendant lived with her mother, as did the defendant's brother. (*Id.* at p. 833.) The defendant and the brother both left the apartment at 7:20 p.m. (*Ibid.*) The mother was found shot dead at approximately 7:40 p.m. (*Id.* at p. 836.) The coroner later determined that the mother's wounds were consistent with a .22 caliber rifle bullet. (*Id.* at p. 835.) The brother testified that he kept a .22 caliber rifle in his room, but that the rifle had gone missing. (*Ibid.*) After the killing, the defendant lied to police about her knowledge of the rifle and about her whereabouts that night. (*Id.* at pp. 836-838.) The prosecution also introduced evidence that the defendant had quarreled with her mother in the past. (*Id.* at p. 838.) However, evidence also showed that the defendant's brother had fought with the mother the night of the killing. (*Id.* at p. 833.)

The court concluded the evidence was insufficient to support a murder conviction. (*Blakeslee, supra*, 2 Cal.App.3d at p. 845.) The court noted that the conviction was based solely on the defendant's alleged motive and opportunity, and the fact that she had lied to police. (*Id.* at p. 840.) However, the court also noted that a similarly strong case could be made against the defendant's brother, with respect to motive and opportunity. (*Ibid.*) Moreover, the court observed that "no one placed defendant in the apartment at the time of the shooting." (*Id.* at pp. 837-838.). The court concluded that "[t]his evidence does not reasonably inspire confidence in defendant's guilt" and that it was "insufficient to constitute proof beyond a reasonable doubt." (*Id.* at p. 840.)

Blakeslee has no apparent application to the instant case. The central issue in *Blakeslee* concerned the identity of the killer. The defendant in *Blakeslee* denied being the shooter. (*Blakeslee, supra*, 2 Cal.App.3d at p. 840.) Conversely, the issue here involves defendant's claim in the trial court that he acted in self-defense and that he did not intend to kill Adams.

Given that *Blakeslee* is inapplicable, we are left with an argument that amounts to an invitation to substitute our judgment for that of the trier of fact. If the circumstances reasonably justify the findings made by the trier of fact, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.) Because substantial evidence supported the second degree murder conviction, defendant's sufficiency of the evidence challenge to the second degree murder verdict is unavailing. (See *Edwards, supra*, 57 Cal.4th at p. 715.)

III. Disposition

The judgment is affirmed.

Mihara, J.

WE CONCUR:

Elia, Acting P. J.

Bamattre-Manoukian, J.

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